IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

***

Criminal Appeal No. 766-DB of 2004

Date of decision: 21st December, 2007

Nishan Singh and others ... Appellants

Versus

State of Punjab ... Respondent

...

CORAM: HON'BLE MR. JUSTICE MEHTAB S. GILL

HON'BLE MR. JUSTICE HARBANS LAL

...

Present: Mr. S. C. Chhabra, Advocate
for the appellants.

Mr. A. S. Jattana, Addl.AG Punjab
for the respondent-State.

...

HARBANS LAL, J

Rarely would the Courts have come across such a bizzare scenario as the present case has projected. The deceased is Satnam Kaur. Her death is accidental or uxoricide is a poser. The former is a version of the State under Section 304-A of IPC. The latter one is of Chand Kaur, mother of the deceased.

The State case has been registered under Section 304-A/337 of IPC on the basis of the statement of Nishan Singh, husband of the deceased,

stating therein that he is resident of Village Bhuse and is employed as a Computer Inspector in Khalsa College, Amritsar for the last 4 years. He was married with Satnam Kaur, daughter of Gurbax Singh, resident of Jaswant Singh Mohalla, Tarn Taran in June, 1995. The estrangement never ensued between him and his wife. At one time, when his wife was away to her parental house in the month of Sawan, he learnt about her having gone with her neighbour Mohinder Singh on his motorcycle and in this regard he was satisfied, when his wife and mother-in-law took special oath that there was nothing wrong. As his mother-in-law had met with an accident, so his wife went again to her parental house. On 31.3.1996, he went to inquire about the health of his mother-in-law. She was found alright. He asked his wife to accompany him to her matrimonial home. She got ready. His mother-in-law offered to go with them to the house of her sister's house at Amritsar. They all three went on scooter to his mother-in-law's sister's house. There, he took liquor with the men-folk. Thereafter, he showed his willingness to his mother-in-law to go back to his village. His wife also got ready to go with him. On the way, he went to the house of his father's sister's son-in-law, who also served him liquor. Before their departure from the house of his mother-in-law's sister, she (mother-in-law's sister) took off the ornaments of Satnam Kaur. He along with his wife started for Village Bhusse around 10.00 P.M, when he was under the influence of liquor. When they were 1 km. short of Village Bhakhna Kalan, meanwhile a speeding truck came from the side of Gurdwara Jhar Sahib. The front portion of the truck struck against his scooter. As a result of its impact, he and his wife fell down from the scooter. He raised alarm loudly. The truck driver sped away the truck. Some boys 6 or 7 in number working in O.C.M. Mill were returning back

from the Mill. They served him water. On regaining consciousness, he asked those boys to call his sister's husband Sukhdev Singh alias Bittu from village Bhakhna Kalan. Thereafter he being in the hospital remained unaware as to what had happened later on. On 4.4.1996, he came to know that his wife had succumbed to the injuries in the accident at the spot. His brother and his acquaintances were talking with each other in a hushed tone that till he (Nishan Singh) is not alright, he be not told about the death of his wife. When he learnt about it, he got mentally upset and could not have a wink of sleep for 3 days. He had all love and affection for his wife who was in the family way. On 10.4.1996, he was discharged from the hospital and then he got a wind that his mother-in-law has moved applications against him and his sister's husband at the instance of someone, though the dead body was cremated in their presence. She has moved these applications at the instance of someone.

Chand Kaur, mother-in-law of the accused Nishan Singh lodged complaint, Exh. PA containing the allegations that her daughter Satnam Kaur was married to Nishan Singh son of Salwant Singh of Village Bhuse, P.S. Sarai Amanat Khan about 9/10 months before her death. She had given dowry including one Scooter to her daughter in her marriage according to her financial capacity but Nishan Singh and the members of his family including his father, Salwant Singh were unhappy with the dowry and they used to remark that inadequate dowry has been given. Right from the day of his marriage, Nishan Singh started saying that gold Kara has not been given to his father and as its consequence they have been humiliated in their brotherhood. Nishan Singh and the members of his family including his father Salwant Singh used to give beatings to Satnam Kaur, who while

coming to Amritsar, used to narrate all this to her (Chand Kaur) and Joginder Kaur (sister of Chand Kaur); they used to compel her to bring more dowry. Nishan Singh used to show the photograph of a girl to Satnam Kaur by saying that he would marry with her after liquidating her physically; Satnam Kaur was given beatings and turned out of her matrimonial home many a time. They (Chand Kaur and her sister) used to leave Satnam Kaur in the house of her in-laws by supplicating them. She used to apprehend danger to her life at the hands of her in-laws. To allay her fear, her brother Inderpal Singh was sent to stay in her in-laws' house at Village Bhuse. He started studying in Khasa School.

On 27.3.1996, Chand Kaur's sister Joginder Kaur went to Village Bhuse to meet Satnam Kaur. On return, Joginder Kaur told Chand Kaur that Satnam Kaur was mentally upset as Nishan Singh and others were harassing. They often used to proclaim that after killing her, to get more dowry, he will contract second marriage. Joginder Kaur brought Satnam Kaur with her and left her in Chand Kaur's house. On 31.3.1996, Nishan Singh came to Chand Kaur's house on Scooter. On the same day, Chand Kaur, Nishan Singh and Satnam Kaur, went to the house of Joginder Kaur at Amritsar where Joginder Kaur counselled Nishan Singh not to maltreat her and that on the next morning, they will send her with him as it had grown dark by that time. Nishan Singh adopted a stiff posture insisting that he will take Satnam Kaur along. Nishan Singh, by hurling abuses upon them, took her with him at about 10.30 P.M. on Scooter. As per his pre-plan, he committed her murder by causing injuries and removed her dead body to Village Bhuse by putting the same in the Van of his sister's husband, Sukhdev Singh alias Bittu. Chand Kaur's son Inderpal

Singh being present in the house of Nishan Singh, disclosed to Chand Kaur that Nishan Singh, Sukhdev Singh alias Bittu and Salwant Singh, father of Nishan Singh, had consumed liquor by sitting in the room after having brought the dead body to their house and they were talking with each other that by killing her, they have removed the hurdle and now they will remarry Nishan Singh at the place of their choice.

On 1.4.1996, in the morning, Sukhdev Singh alias Bittu, husband of Nishan Singh's sister came to Chand Kaur's house in his Van and narrated that on the previous night, Nishan Singh had met with an accident in which he sustained multiple injuries and that their daughter Satnam Kaur was alright. She, along with her sister Joginder Kaur, went to Village Bhuse with Sukhdev Singh alias Bittu in his Van. On reaching there, they found Satnam Kaur lying dead with injuries on her jugular vein and other parts of her body. They raised alarm that they have killed their daughter and the post-mortem on her dead body is to be got conducted. Sukhdev Singh alias Bittu, Nishan Singh and the members of his family thwarted their such attempt and forcibly cremated the dead body by pretending that there were serious injuries on the body of Nishan Singh and his condition being critical, he was to be removed to Ludhiana for his treatment. When Chand Kaur and her sister were on their way back, they examined the place of alleged accident. The blood was observed in the road side field of wheat crop, which lay trampled. They perceived that Nishan Singh has committed the murder of Satnam Kaur in the wheat crop field. Chand Kaur , along with her sister Joginder Kaur, went to Navpreet Nursing Home, Khandwala, P.S. Chheharta, where Nishan Singh was got admitted by his friend Jasbir Singh, an employee of this Nursing Home. It was also

noticed that no damage has been caused to the Scooter. Nishan Singh and Sukhdev Singh alias Bittu came to the house of her sister Joginder Kaur and confessed before her that on 31.3.1996, they put an end to the life of Satnam Kaur by inflicting injuries near Village Bhakhna and they, along with father of Nishan Singh, cremated the dead body to avoid post-mortem examination. As a measure of compensation, they offered to return the dowry articles along with a cash amount of Rs.1,00,000/-. They asked her to get the matter patched up with Chand Kaur.

As is borne out from the record, on 19.3.2002, Mr. Baldev Singh, Additional PP assisted by Mr. A.P.S.Randhawa, Advocate, counsel for the complainant and Mr. R.M.Zakhmi, Advocate, counsel for the accused, made joint statement to the effect that we have no objection if Sessions Case No. 81 " State v. Nishan Singh" is consolidated with Sessions Case No. 80 of 22.11.2001 titled as "Chand Kaur v. Nishan Singh etc." and the evidence is recorded in the latter. In view of this statement, the State case as well as the complaint case, were consolidated vide order dated 19.3.2002 recorded in the order sheet.

The accused Nishan Singh and Sukhdev Singh alias Bittu were charged under Section 302 as well as under Section 201 of IPC whereas their co-accused Salwant Singh,father of Nishan Singh was charged under Section 302/34 and Section 201 of IPC. They did not plead guilty and claimed trial.

To bring home guilt against the accused, the prosecution examined Chand Kaur complainant, PW-1, her sister Joginder Kaur, PW-2, Inderpal Singh (son of the complainant, Chand Kaur) PW-3, ASI Tarsem Kumar, PW-4, Kabal Singh, PW-5, Sarabjit Kaur, Junior Assistant, DTO

Office, Amritsar, PW-6 and closed its evidence by giving up the remaining P.Ws.

On close of the prosecution evidence, when examined under Section 313, Cr.P.C, the accused Nishan Singh denied all the incriminating circumstances appearing in the prosecution evidence against him and came up with the plea that it is a false case against him at the instance of my mother-in-law, Chand Kaur, who wants to harass me and my family members as she considers me responsible for the death of her daughter. It is wroth pointing out here that in his statutory statement, he has admitted that Satnam Kaur deceased was married to him about 7/8 months before the occurrence and that Salwant Singh accused is his father whereas Sukhdev Singh accused is his brother-in-law (sister's husband); that his wife's brother, Inderpal Singh, PW used to study in a School in his (Nishan Singh) village. According to him, his wife died in the accident in which his Scooter suffered wear and tear; that the dead body of Satnam Kaur was cremated with consent of her parents without post-mortem examination; that the Scooter involved in the accident was registered in the name of his wife Satnam Kaur. Salwant Singh as well as Sukhdev Singh accused, when examined under Section 313, Cr.P.C, denied all the incriminating circumstances appearing in the prosecution evidence against them. They adopted the plea taken up by their co-accused Nishan Singh. Having examined Dalbir Singh,DW-1, Kashmir Singh, DW-2 and Dr. Navpreet Singh, Navpreet Nurising Home, G.T. Road, Chheharta (Amritsar), DW-3, they closed their defence evidence.

After hearing the learned Additional PP for the State, the learned defence counsel and examining the evidence on record, the learned

Additional Sessions Judge (Ad-hoc), Amritsar, convicted and sentenced Nishan Singh accused to undergo imprisonment for life and to pay a fine of Rs.2,000/- or in default thereof, to further undergo rigorous imprisonment for 2 months under Section 302 of IPC and further convicted and sentenced him to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1,000/- or in default thereof, to undergo further rigorous imprisonment for one month under Section 201 of IPC and also convicted and sentenced Salwant Singh and Sukhdev Singh accused to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1,000/- each or in default thereof, the defaulter to further undergo rigorous imprisonment for one month under Section 201 of IPC, with the direction that both the sentences of Nishan Singh accused will run concurrently.

Feeling aggrieved with the impugned judgment/order of sentence dated 21.8.2004, Nishan Singh, Sukhdev Singh and Salwant Singh have preferred this appeal.

We have heard Mr. S.C.Chhabra, Advocate, counsel for the appellants as well as Mr.A.S.Jattana, learned Additional Advocate General, Punjab, besides going through the evidence with due care and circumspection.

Mr. S.C.Chhabra, Advocate, on behalf of the appellants, strenuously urged before us that it is a case of the appellant Nishan Singh that in stead of taking action against the truck driver which probably could not be known by the Police, he has been challaned by the Police under Section 304-A of IPC. He further puts that the merger of the State as well as the complaint case being against law, the trial stands vitiated in view of the observations made in the case of **Balbir** v. **State of Haryana,** 1999 (4)

Recent Criminal Reports (Criminal) 839.

To tide over these submissions, Mr.A.S.Jattana,learned Additional Advocate General, Punjab, agitated at the bar that the material witnesses in both the cases being the same, the consolidation of both the cases does not suffer from any illegality.

We have given a deep and thoughtful consideration to the rival submissions.

As per grounds of appeal, the State case under Section 304-A of IPC was registered on 17.5.1996 on the statement of Nishan Singh recorded during inquiry proceedings by the Superintendent of Police on 22.4.1996. As per the same, when he along with his wife Satnam Kaur deceased was returning to his village on the Scooter, a truck approaching from the opposite direction, dashed against his Scooter and in this accident his wife succumbed to the injuries. The truck driver sped away the truck. that meanwhile 6/7 employees of O.C.M.Mill came over there through whom, he called his sister's husband Sukhdev Singh alias Bittu accused, who got him admitted in the hospital. It is apt to be borne in mind that the occurrence took place on the night of 31.3.1996. The dead body of the deceased was cremated on the next day. His above statement became the basis of State case. If it was a case of accident, it was imperative upon Nishan Singh to have informed the Police. If he was removed to a private hospital by his sister's husband, Sukhdev Singh alias Bittu, the latter was obligated to inform the Police regarding this occurrence. Startlingly enough that Nishan Singh was taken to a private hospital instead of a government hospital. As per his statement dated 22.4.1996 ibid he had received very serious injuries on his body. Dr. Navpreet Singh, DW-3, has testified that he

has brought the Admission Register of his hospital and as per entry made in the same, Nishan Singh accused present in the Court was admitted in the hospital on 1.4.1996 and was discharged on 10.4.1996 and that it was a case of accidental injuries suffered by him as was disclosed by him and that it being an old case, bed-head ticket was not traceable as the same has since been destroyed. It is in his cross-examination that I do not remember about the injuries which were on his person when he was admitted in the hospital; I do not remember if there was any injury suffered by him; that I cannot say what was the problem since the record is destroyed; that entry of admission was made by the doctor, who was on duty at that time and he was Swinder Singh; that Jasbir Singh was employed at that time; Nishan Singh was not known to me earlier; even I cannot identify him at present; I do not remember if original bed head-ticket was taken by the Police; that the pages of the Register have not been numbered and that I do not recollect if any information about this case was given to the Police. Chand Kaur's case is that Jasbir Singh was on friendly terms with the accused and he was employed in Navpreet Nursing Home, G.T.Road, Chheharta, Amritsar and as per the pre-plan, after committing the murder of the deceased, Nishan Singh, by exercising the influence of his friend Jasbir Singh in the hospital being its employee, got himself admitted there. There appears to be substance in this plea. As per entry in the Register, Nishan Singh was admitted in the hospital on 1.4.1996 and it was a case of accidental injuries as was disclosed by him. The above mentioned doctor has no where stated that soon after admission of Nishan Singh, the Police of the concerned Police Station was informed regarding his admission with accidental injuries. Presumably, the bed-head ticket has been deliberately withheld.

This doctor, obviously, regretted his inability to tell about the injuries which were on the person of Nishan Singh at the time of his admission. As revealed by his cross-examination, the entry of admission of Nishan Singh was made by Swinder Singh as he was on duty at that time. Dr. Navpreet Singh, DW has not apportioned any reason for not sending Dr. Swinder Singh to give evidence. More to the point, pages of the Register have not been numbered which further cast a cloak of suspicion around the genuineness of the entries in this Register. As would be apparent from the record, the Police did not initiate any action against this Nursing Home for not informing about the admission of this appellant Nishan Singh in the hospital. There being no injuries, the doctor should have refused to admit this appellant. If there were superficial injuries he should have been discharged after giving preliminary medical aid. By no reason, there was any justification to keep him in the hospital for ten days. To mystify or confuse murder with accident, he remained hospitalized for a couple of days. Had there been some serious injuries, he might have been removed to the Civil Hospital or some other Medical Institute of repute. Nishan Singh would have informed the Police through his brother-in-law Sukhdev Singh alias Bittu. He put forth the version of accident before the Police for the first time on 22.4.1996 during inquiry proceedings initiated at the instance of Chand Kaur, complainant, who suspected it to be a foul play. If it was a case of an accident, Nishan Singh was obliged to inform the Police. If it was a case of hit and run, notwithstanding, it was his moral as well as legal duty to inform the Police. In all probabilities, it was his bounden duty. In his statement, which became the basis of the FIR, he has stated that it was on 4.4.1996 that he learnt about the death of his wife in the accident. This

again is a fabricated story. There is nothing in the evidence of Dr. Navpreet Singh, DW-3 that Nishan Singh remained unconscious right from his admission in the hospital till 4.4.1996. To us, it appears that to screen himself from the murder of his wife, he created evidence by getting himself admitted in the above mentioned Private Nursing Home. There was no cogent reason to cremate the dead body without autopsy. This is a glaring circumstance which nullifies the story of accident. Dalbir Singh,DW-1 has deposed that the dead body was brought to the village which was seen by him at 8.00 A.M. and that at the time of cremation, the in-laws of the accused including the complainant (referring to Chand Kaur) were present and that Nishan Singh accused was not present and that wife of Nishan Singh died in the accident. Kashmir Singh, DW-2 has also stated in similar terms. This evidence has been produced to demonstrate that the dead body was cremated within the sight of the complainant party without there being any objection from their side. It is in the cross-examination of Chand Kaur, PW-1 " that I did not attend the cremation of my daughter; that I left Village Bhuse after about one hour to see my son-in-law; that I was confident on seeing the dead body of my daughter that she had been killed; that I lodged the report with the Police at P.S. Gharinda on the same day; that I had given in writing to Incharge, P.S .Gharinda; that the Police did not accompany us to Village Bhuse. As per this evidence, she was not present at the time of cremation of the dead body and further the Police did not swing into action against the accused. It is also in her cross-examination that I had told the Police to visit Village Bhuse as my daughter had been murdered but the S.H.O. told me that he will come of his own and that P. S. Gharinda is at a distance of 3-4 kms. from Village Bhuse. This evidence goes to show that

she had brought to the notice of the Police that her daughter has been murdered but the Police did not initiate any action and meanwhile, the accused cremated the dead body. It is deducible from this evidence that Police was siding with the accused party to rescue the real murderer Nishan Singh.

The examination-in-chief of Chand Kaur, PW-1 reads as under:-

> " My daughter Satnam Kaur was married to Nishan Singh s/o Salwant Singh r/o village Bhuse, P.S Sarai Amanat Khan 7/8 months prior to her death. Dowry articles were given to my daughter. A scooter was also given in the dowry. Nishan Singh and Salwant Singh accused complained that no golden Karra was given and on that account, they are suffering humiliation in the society. Nishan Singh used to beat my daughter and used to turn her from the matrimonial house on the pretext of demand of television and fridge and other dowry articles. Nishan Singh used to say that after killing my daughter, he will remarry with a girl. Inderpal Singh, my son was got admitted in a school at village Bhuse. The accused used to collect the Panchayat and in that Panchayat I used to send my daughter back in the house of the accused.
>
> On 27.3.1996, my sister Joginder Kaur left my daughter Satnam Kaur to my house and she told that

she was given beatings and on that account, she is being left at my house. Nishan Singh accused came to my house on 31.3.1996 to bring back my daughter and scolded my daughter to accompany him. Thereafter, I alongwith Nishan Singh accused, my daugther Satnam Kaur and myself went to the house of Joginder Kaur, my sister on a scooter. Nishan Singh gave abuses to my daughter in the house of Joginder Kaur and Nishan Singh insisted that they shall proceed at night at about 10.30 P.M. and he took away my daughter Satnam Kaur with him at that time. In fact, there was planning of Nishan Singh. On 1.4.1996,Sukhdev Singh accused who is brother-in-law of Nishan Singh came to our house and told us that Nishan Singh and my daughter had met with an accident and we went to village Bhuse and found the dead body of my daughter Satnam Kaur. She was bearing multiple injuries on her body. My son Inderpal Singh was present near the dead body. He told that Satnam has been murdered. All the three accused were taking the liquor and my son further told us that the accused were talking that Satnam Kaur has been murdered and Nishan Singh has cleared a way for remarry. We went to hospital to know about the welfare of Nishan Singh and found that Nishan Singh was taking cold drink and was not

having any injury on his person. we insisted for conducting the autopsy on the dead body of my daughter but the accused have not allowed to do so. The accused had cremated the dead body of my daughter. We went to the place of alleged accident. We found that blood was lying near the road as well as in the wheat crop field and some of the wheat crop was lying crushed because of the struggle of my daughter with the accused. The scooter did not suffer any damage. Thereafter accused approached my sister Joginder Kaur and told her that they are ready to pay an amount of Rs.1 Lac in cash, scooter and other dowry articles in case the complainant do not take any action in connection with the murder committed by the accused. I refused the offer and told Joginder Kaur that matter shall be decided by the Court. The accused approached the respectables of Tarn Taran with the same offer. I got recorded my statement. again said I made complaint in PS Gharinda but the matter was fabricated by the police. The police did not record the statements of the witnesses correctly. Thereafter I made my complaint Ex. PA. I have also made complaints to senior police officers. Photograph, Mark 'A' relates to a girl with whom Nishan Singh wanted to re-marry who is shown at point Mark A-1. My application is Mark 'B' which is

photostat copy of the original and copy of inquiry report Mark 'C' which is also photostat copy. ”

The examination-in-chief of Joginder Kaur, PW-2 reads as under:-

“ Deceased Satnam Kaur was daughter of my sister. Her marriage was solemnized about 9 months before her death. Nishan Singh accused present in Court is husband of the deceased. Salwant Singh accused is father of Nishan Singh, Sukhdev Singh accused is sister's husband of Nishan Singh. After the marriage the accused were demanding property from the deceased and were beating and maltreating the deceased. They used to say that no golden karra was given to Salwant Singh and as such, they feel belittled in the society. The accused used to give beating to the deceased and used to turn her out from the house but we used to send the deceased back to the matrimonial house. The deceased used to tell us about this on various occasions. On 26.3.1996, I had gone to village Bhuse to meet Satnam Kaur. She also complained to me regarding mal-treating by the accused on that day. I stayed there for a night and then told Satnam Kaur to inform about all this maltreatment to her mother Chand Kaur. On 27.3.1996, I left Satnam Kaur at the house of her mother Chand at Tarn Taran. On 31.3.1996 accused Nishan Singh had again gone to the house of my sister to

take Satnam Kaur. Chand Kaur, Nishan Singh and Satnam Kaur then came to my house at Shaheed Udham Singh Nagar,Amritsar in the evening. There again Nishan Singh started quarreling with Satnam Kaur. Nishan Singh showed some photograph to Satnam Kaur saying that he will marry another girl and will kill Satnam Kaur. At 10.30 P.M. accused Nishan Singh took Satnam Kaur alongwith him on a scooter. However, we were asking Nishan Singh not to go at that time.

On 1.4.1996 in the morning, we received a message that accident took place and Nishan Singh received multiple injuries and that Satnam Kaur has not received any injury but crying. This message was brought to us by accused Sukhdev Singh. Inderpal Singh PW son of my sister was already staying at the house of Nishan Singh accused. We sent him there so that the activities of the accused could be checked. I and Chand Kaur accompanied Sukhdev Singh accused on a Maruti. When we reached house of Nishan Singh in village Bhuse, we saw Satnam Kaur lying dead. Salwant Singh accused was present there but Nishan Singh accused was not there. The body of Satnam Kaur bore multiple injuries on her head, neck and other parts of body. There was a deep injury on the head of Satnam Kaur and there also was strangulation Mark on the neck of Satnam Kaur. Inderpal, PW told us that Satnam Kaur was brought during night by

Nishan Singh and Sukhdev Singh while she was dead. Inderpal also told that thereafter, all the accused took liquor and that they were talking that now Satnam Kaur has been killed and a new marriage will be arranged qua Nishan Singh. We raised hue and cry so that post mortem could be conducted on the body of Satnam Kaur. Both Sukhdev Singh and Salwant Singh accused told us that Nishan Singh has suffered very serious injuries and is admitted at Navpreet Hospital. He further told us that condition of Nishan Singh is critical and he is to be taken to hospital at Ludhiana immediately and as such cremation of Satnam Kaur is to be carried out immediately. They also threatened me and my sister and then forcibly cremated the body of Satnam Kaur. Thereafter, I and my sister thought of going to Navpreet Hospital and we went to Navpreet Hospital at Amritsar. At Navpreet Hospital Jasbir Singh who was friend of Nishan Singh was working there. When we reached Navpreet Hospital, we say that Nishan Singh was drinking something and was not having any injury on his person. Our suspicion was confirmed that Nishan Singh murdered Satnam Kaur. We then went on the crossing near village Bhakna which actually was the village of Sukhdev Singh accused. There we saw the blood stains in the wheat crop which was lying badly trampled. We gave information to the police regarding this, but the police

was not listening to us. We had moved applications and telegrams to the higher police officers also. Senior police officers also came for conducting inquiry. I had been narrating all the matter to the police. When the accused came to know about applications etc. being moved by my sister, then Nishan Singh and Sukhdev Singh accused both came to my house after 3/4 months of the occurrence. They told me that my sister is approaching higher officers and that I should prevail upon Chand Kaur for not doing so. They also told us that they have committed a mistake by murdering Satnam Kaur. Both the accused stated before me that they will give Rs. One lac and all the jewellery back and offered for a compromise. The accused had been going to many other persons also for the compromise. When the police did not take any proper action, my sister filed complaint in the Court. My statement was also recorded in the committing Court. The accused had killed Satnam Kaur and wrongly tried to show it a case of accident. ”

The examination-in-chief of Inderpal Singh, PW3 reads as under:-

“ I had one sister and a brother. Satnam Kaur deceased was my sister. In the year 1996, I was studying in G.S.Senior School at Village. My mother used to live at Tarn Taran. Khasa may be situated at a distance of 35 km.

from Tarn Taran. Nishan Singh accused belongs to village Bhuse. Bhuse is at a distance of about 10 kms. from Khasa. I was studying in 8th Class in the year 1996. I used to live with Nishan Singh accused at village Bhuse. From there I used to come to my school daily. Satnam Kaur was married to Nishan Singh accused. My sister Satnam Kaur deceased took me to village Bhuse to stay with her. Nishan Singh accused used to give beating to my sister Satnam Kaur and also used to send her to our house. Since Satnam Kaur was afraid of the accused, she took me to village Bhuse and got me admitted at School at Khasa. Nishan Singh and Salwant Singh were mal-treating my sister and were asking for more dowry. About six years back, my sister was sent to Tarn Taran. Thereafter, after some days I was present in the house of Nishan Singh at village Bhuse. I saw Nishan Singh, Salwant Singh and Sukhdev Singh accused in a car alongwith the dead body of my sister Satnam Kaur. At that time Nishan Singh was not having any injury on his person. Satnam Kaur was having multiple injuries on her person. She was having injuries on her head and neck. Thereafter the accused took liquor in a room of the house. I out of fear did not speak any thing. They were saying that they had killed Satnam Kaur and now Nishan Singh will marry again. I do not know as to where the accused went thereafter. On the next morning, I saw my mother

> and my mother's sister. They were brought by Sukhdev Singh accused. Nishan Singh accused was not present there. I told every thing to my mother and Masi. My mother insisted for Post-mortem but Sukhdev Singh and Salwant Singh hurriedly cremated the dead body. We had been meeting the police officials, thereafter I was examined as a witness in the committing Court. ”

It follows from the statement of Inderpal Singh, PW-3 that his sister Satnam Kaur deceased took him to Village Bhuse to stay with her as Nishan Singh used to give beatings to her and got him admitted in School. Nishan Singh accused in his statutory statement has also admitted that Inderpal Singh, brother of his wife was got admitted in School at his village. There is similar admission inthe statutory statements of his co-appellants. One thing is clear from this evidence that Inderpal Singh used to reside with the deceased in her in-laws' house. As stated by Chand Kaur, PW-1, her son Inderpal Singh told that Satnam Kaur had been murdered and all the three accused were taking liquor and they were talking that Satnam Kaur has been murdered and Nishan Singh has cleared a way for re-marriage. It is also in her deposition that when she went to the hospital to know about the welfare of Nishan Singh, he was found taking a cold drink and was not having any injury on his person. It is inthe statement of Joginder Kaur, PW-2 that when they reached the house of Nishan Singh, they observed multiple injuries on the head, neck, and other parts of the body of Satnam Kaur deceased and there was also a deep strangulation mark on her neck and that Inderpal Singh, PW told them that Satnam Kaur was brought during night by Nishan

Singh and Sukhdev Singh and that all the accused took liquor and they were talking that now Satnam Kaur has been killed and new marriage will be arranged qua Nishan Singh and that they raised hue and cry so that post-mortem could be conducted on the dead body of Satnam Kaur but Sukhdev Singh and Salwant Singh accused told them that Nishan Singh had suffered very serious injuries and is admitted at Navpreet Nursing Home and his condition was critical and is to be taken to a hospital at Ludhiana immediately, so cremation of Satnam Kaur is to be carried out immediately. It is also in her evidence that they forcibly cremated the dead body of Satnam Kaur. This evidence brings out that the complainant party was psyched to cremate the dead body without further loss of time, so as to take necessary care of Nishan Singh. This way, the complainant party was misled. It might be in the mind of the accused that if the post-mortem examination onthe dead body is carried out, it will spill the beans or let the cat out of bag that she was murdered.

The complainant Chand Kaur has also produced a photograph marked “A” of a girl with whom Nishan Singh appellant allegedly wanted to marry after putting an end to the life of Satnam Kaur. The sum and substance of the statements of Chand Kaur, Joginder Kaur and Inderpal Singh, P.Ws is that Nishan Singh was dissatisfied with the dowry given to him in his marriage which was solemnized barely 7/8 months prior to this occurrence. As per the evidence of Sarabjit Kaur, PW-6, the Scooter bearing registration no. PB-02-J-9481 involved in the occurrence, was registered in the name of deceased Satnam Kaur vide Ex.P6/A. It is in the statement of Nishan Singh appellant which became the basis of the FIR that in the month of Sawan, Satnam Kaur, his wife was away to her parental house and

she had gone to some place by riding on the pillion of motorcycle of Mohinder Singh, their neighbour, about which he came to know, but on being taken special oath by her and his mother-in-law in the terms that there was nothing wrong, he was satisfied. It is, thus, inferable that he used to suspect the fidelity of his wife,besides being disconsolate with the dowry articles given to him in the marriage. These reasons appear to be the motive for committing the murder.

It is in the solemn affirmation of Chand Kaur, PW-1, that the scooter did not suffer any damage. Exh. PW4/B is the report of Mechanic regarding the scooter. As per its contents, the mud-guard was found broken from right side and the right brake was also found broken. The chasis of the scooter was also found bended. This report made by Tarsem Kumar,ASI, P.S.Gharinda, is silent about the date of mechanical test. It is in the statement of above mentioned ASI that the scooter was produced before him on21.5.1996 by the accused Nishan Singh. Right from 31.3.1996 till 20.5.1996, he had sufficient time to simulate this scooter as having met with an accident. The most disbelieving part of accident story is that he himself did not sustain any injury as he has not produced even a scintilla of evidence in proof of this fact. To add further to it, if the impact of dashing of the alleged truck against the Scooter was so severe, it shrouds in suspicion, as to how he escaped unhurt while his wife died at the spot. He being the driver, was to bear the brunt. By no process of reasoning, it could have been a providential escape for him though a disaster for his wife. A fortiori, if the accident was so severe, the steering and other parts of the Scooter might have also got damaged extensively. This report, thus, seems to be an outcome of manoeuvering. As the proverbial saying goes, man may

tell a lie, but the circumstances do not. At the cost of repetition, it deserves to be pointed out here that had it been a case of accident, as a matter of abundant caution, the matter might have been reported to the Police with promptitude. The propounding of theory of accident after 21 days before the Police in itself is a circumstance, which strikes a death knell to the State case.

It is in the examination-in-chief of Inderpal Singh, PW-3 that thereafter, after some days I was present in the house of Nishan Singh at Village Bhuse. I saw Nishan Singh, Salwant Singh and Sukhdev Singh in a Car along with the dead body of my sister Satnam Kaur. At that time, Nishan Singh was not having any injury on his person. Satnam Kaur was having multiple injuries on her person. She was having injuries on her head and neck. Thereafter, the accused took liquor in a room of the house. I, out of fear, did not speak any thing. They were saying that they had killed Satnam Kaur and now Nishan Singh will marry again. I do not know as to where the accused went thereafter. It is in his further examination-in-chief that my mother insisted for post-mortem but Sukhdev Singh and Salwant Singh hurriedly cremated the dead body.

It is in the examination-in-chief of Chand Kaur, PW that we went to the place of alleged accident; that we found that blood was lying near the road as well as in the wheat crop field and some of the wheat crop was lying crushed because of the struggle of my daughter with the accused. It is also in the chief examination of Joginder Kaur, PW that we then went on the crossing near Village Bhakhna, which actually was the village of Sukhdev Singh accused; that there we saw blood stains in the wheat crop, which was lying badly trampled; that we gave information to the Police

regarding this but the Police was not listening to us; that we had moved applications and telegrams to the higher Police Officers also. This evidence too affirm that Satnam Kaur was murdered after having been taken to the road side wheat crop field in the odd hours. In the rough site-plan,Exh. PW4/A, the point 'A' denotes the place at which Satnam Kaur expired allegedly by fall and mark 'B' indicates the place at which Nishan Singh appellant was lying in unconscious condition and mark 'C' relates to the place at which Scooter was lying. This site-plan purported to have been drawn on 17.5.1996, obviously after a lapse of more than one and half month of the occurrence by PW-4, Tarsem Kumar,ASI who has nowhere stated as to at whose pointing out he prepared the same. As alleged by the appellant Nishan Singh in his statement forming the basis of the FIR, 6/7 workers of O.C.Mill were returning from the Mill and they were asked to call his brother-in-law Sukhdev Singh alias Bittu. The investigator has no where stated that any such worker of the above mentioned Mill was joined in the investigation. To our mind, these workers would have been the only source of authenticity. As per the version in the State case, the truck was approaching from the opposite direction. The above mentioned points 'A' and 'B' have been shown away from the road and point 'C' has been indicated by far from the road. There is nothing in the FIR that the truck, by coming to the wrong side, struck against the Scooter. If it had been a case of accident, the truck driver, to avert the accident, might have applied brakes of which skid marks would have been found present on the road. The same would have been shown in the rough site-plan. So, the aforementioned reasons knock the bottom out of the State case.

In **Balbir'case** (supra), adequately relied upon by Mr.Chhabra,

it has been laid down by the Apex Court, that " at any rate, the Court should have been absolutely certain that the Police officials and the real culprits have entered into a criminal conspiracy to rescue the real murderer, unless the Court reaches such a degree of satisfaction, a Criminal Court cannot afford to conclude that the prosecution instituted on private complaint has succeeded in proving beyond all reasonable doubt that it was this accused who had committed the murder of Om Parkash. "

Harking back to the facts of the instant case, it has been established by the complainant, Chand Kaur that the police officials and the real culprits were in league to rescue the real murderer Nishan Singh. The real controversy centres around Nishan Singh. The material witnesses in both the cases are the same. An identical plea has been adopted in their statutory statements by all the appellants. Therefore, there was nothing wrong to club and try both the cases together. In **Balbir's case** (supra), two diametrically divergent stories were put to test. The facts of the case in hand are poles apart from **Balbir's** case. It is in the examination-in-chief of Chand Kaur, PW that " thereafter accused approached my sister Joginder Kaur and told her that they are ready to pay an amount of Rs.1,00,000/- in cash, Scooter and other dowry articles in case the complainant did not take any action in connection with the murder committed by the accused. I refused the offer and told Joginder Kaur that the matter shall be decided by the Court. The accused approached the respectables of Tarn Taran with the same offer." Joginder Kaur, PW-2 also stated in similar terms, which tantamounts to extra-judicial confession. In the words of Lord Hewart, " It is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to

be done. ”

Section 106 of the Indian Evidence Act lays down that “ when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. ” In re: **State of West Bengal** v. **Mir Mohammad Omar and others etc. etc.** , 2000 (2) Simla Law Journal 1679, it has been observed that “ but this Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference. ” In **Shambu Nath Mehta** v. **The State of Ajmer,** 1956 SCR 199, it has been observed as under :-

> “ This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are especially within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word 'especially' stresses that, it means facts that are pre-eminently or exclusively within his knowledge. ”

Adverting to the facts of the present case, the theory

propounded by the State has been disbelieved. It was especially within the knowledge of Nishan Singh appellant as to how his wife died. So, in view of the provisions of Section 106 ibid as well as the afore-extracted observations, he was required to offer explanation in this regard as his version that his wife lost life in the accident has been discountenanced. There being no other satisfactory explanation from his side, the Court is bound to draw an inference that it was he who committed the murder of his wife. It is in his statement that he had consumed sufficient liquor before starting for his village with his wife in the night time on Scooter though as per Chand Kaur's evidence, he was asked not to leave in the night time. It is probable that on that night before proceeding, he intentionally consumed liquor to muster up the courage to eliminate his wife. Nishan Singh has not appeared as his own witness to substantiate his version that his wife had sustained injuries in the accident with truck. The DSP who conducted the inquiry might have inquired from the doctor as to under which circumstances Nishan Singh remained hospitalized. The Bed Head ticket has been knowingly withheld.

It is own version of Nishan Singh that his co-appellant Sukhdev Singh alias Bittu came at the spot with his Van and removed him to the Navpreet Nursing Home. Sukhdev Singh has not furnished any explanation as to under what circumstances Satnam Kaur was left at the spot. He is absolutely silent as to whether she had expired by such time or she was writhing in pain. If he could be removed, why she was left at the spot. Why he did not inform the Police is also a question mark. As emerges out of the evidence, Sukhdev Singh too actively participated in cremating the dead body hurriedly to screen his wife's brother Nishan Singh from the clutches

of prosecution of murder.

As regards Salwant Singh appellant, he being a father-in-law of the deceased, was obligated to report the matter to the Police, if it was a case of accident. As transpires from the evidence, he was also disposed to cremate the dead body in a haste manner so as to save his son Nishan Singh from the charge of murder.

At this juncture, by relying upon the observations made in **Sukhram** v. State of **Maharashtra, 2007 (4), Recent Criminal Reports (Criminal) 45, Mr.** Chhabra contended that Salwant Singh appellant, in no manner can be attributed with the knowledge of commission of any offence by his son Nishan Singh and that being so, no offence under Section 201 of IPC is established against him.

This contention does not find favour with us. The facts of **Sukhram's case** (supra) are distinguishable from the one in hand. In that case, the accused and his wife were sleeping in a room. The former throttled the latter to death during night time. Father of accused was also in the house. In these circumstances, it was held that the father cannot be held guilty under Section 201 or 302 of I.P.C. Here in the instant case, Salwant Singh, being the father of Nishan Singh, along with his son-in-law Sukhdev Singh alias Bittu, appellant might have been causing hurry to cremate the dead body so as to screen Nishan Singh from legal punishment. Salwant Singh, appellant, being the father of Nishan Singh, might have gone to the private Nursing Home to inquire about his health and learnt as to what was the reality. Thereafter, to save his son from the legal punishment, he might have been impetuous to cremate the dead body as a measure to cause disappearance of the evidence of murder.

In the ultimate analysis, it is found that the impugned judgment does not suffer from any illegality or infirmity. Sequelly, this appeal fails and is dismissed being meritless.

(HARBANS LAL)
JUDGE

(MEHTAB S. GILL)
JUDGE

21st December, 2007

Whether to be referred to the Reporter? Yes/No

RS